RADIO AND EDITORIALIZING

A Summary of a General
Session of the

SEVENTEENTH INSTITUTE FOR EDUCATION BY RADIO

May 5, 1947

Statements by—

James Lawrence Fly
Rex Howell
Robert D. Leigh
Allen Sayler
Paul D. P. Spearman
and General Discussion

THE INSTITUTE FOR EDUCATION BY RADIO
Ohio State University
Columbus 10

the conception of public interest set up by the Communications Act as the criterion of regulation." (8 F.C.C. 339-340)

The American Civil Liberties Union is in whole-hearted agreement with this position. In other words, to answer the question which is our topic, radio should *not* have an editorial policy in controversial areas. What is to be avoided is the broadcaster's using his facilities to take one-sided attitudes toward controversial issues, without giving comparable time to other points of view.

It is important to keep in mind, however, that the Mayflower policy should be related to situations substantially similar to the facts and practices that faced the Commission in that particular case, and, like good lawyers, we should be careful not to stretch this statement to cover factual situations unrelated to the facts which gave them birth.

This attitude, however, neither prevents radio from playing an integral and important part in the public discussion of controversial issues, nor from assuming non-controversial civic responsibilities of sizeable importance.

The distinction between "controversial" and "non-controversial" programming is, of course, sometimes quite blurred. As in many distinctions, basic to various fields of law, the distinction does not center over a sharp dividing line, with given facts clearly on one side or the other. Instead, the dividing point is a "twilight zone" where a classification in either direction is arguable.

A beer advertisement is "controversial" to a prohibitionist, though most of us would probably place it in the category of "non-controversial." Similarly, a religious service strikes an atheist as "controversial" though most of us would think otherwise. On the other hand, I'm certain we could readily imagine news commentaries which would strike us as being quite one-sided on what we felt was a controversial issue but which the commentator might feel was almost the gospel truth, and hence, not controversial. Here, we cannot hope to spell out definitions or standards which will automatically fix the classifications for us.

What we can hope for, however—and demand—is that the broadcaster be constantly aware that he has no right to ignore any point of view while promoting a contrary one held by substantial elements of the public. If he is willing to operate on that principle, I think he will be able to follow the Mayflower decision without too much trouble.

It appears that some broadcasters have taken shelter under the supposed meaning of the Mayflower decision to avoid public responsibility. The mere fact that in the middle, between the one extreme of the charitable enterprise and the promotion of a political candidacy, there is a twilight zone is no excuse for shirking public responsibility. There are many such twilight zones; e.g., in due process of law, interstate commerce, unreasonable restraint of trade, negligence. The responsibility to the charitable undertaking, to civic, educational and social betterment is clear. The broadcaster may join in the demand for better health facilities, for pure water, for sanitation. In any event, the worst that can happen in case the broadcaster unwittingly steps into a basically controversial issue is that he will have to afford equal facilities for the opposing point of view.

The American Civil Liberties Union believes that broadcasters should—and it urges that they do—participate actively in community affairs, both by making their facilities available to the impartial presentation of opposing points of view on controversial issues and by lending their support, as a public service, to non-controversial matters of public importance, such as support of community civic, educational, and charitable activities.

Even though we say radio should not have an editorial policy as regards "controversial" matters, we insist that it should operate on the widest scope possible in non-controversial areas. Radio will not be "editorializing" or violating the law if it takes on added social responsibilities, and shows willingness to lend its whole-hearted support to the civic and educational problems that beset almost every American community. I know each of you could readily think of specific ways in which radio could help out in this respect. The Union has always urged that radio seize this opportunity and make the most of it. Nothing in the Mayflower principle conflicts with this urging.

The important governing principle is that the role of radio be impartial; not that it be inactive or unconcerned. Here, public reliance for a balanced presentation of ideas must largely rest on the broadcaster's awareness of his public trust and his willingness to execute it in high good faith.

Thus construing the Mayflower decision, the broadcaster can avoid use of his public trust as a mouth-organ for his own political views, or its use by any dominant economic source, can offer a full and impartial presentation of controversial issues and can stand actively in the ranks of the forces for public

betterment. This sort of operation can only enhance the prestige of broadcasting. At this critical juncture of world affairs it is important that the standing and the power of radio be both maintained and expanded in what is one of its most vital characteristics; that is, the ability to promote the free flow of communications in that most precious of all fields—ideas.

REX HOWELL[2]

RADIO SHOULD HAVE AN EDITORIAL POLICY, because therein lies one of radio's great opportunities for public service.

First, however, we must decide if radio has the right to editorialize. I think the answer to that is also unequivocally in the affirmative. I think we are nearly all generally agreed, that anything as fundamentally related to our Constitutional guarantees of freedom is not rightfully subject to challenge. However, since there is a small but vocal minority that opposes, in principle, the basic right of broadcasters to express opinions of their own, a brief discussion of the legal aspects of "editorializing" by radio may be in order. First, let me say, I have never personally felt that the present members of the FCC have any objections to radio editorials, properly handled. Hence what I am about to state should not be construed as charging the Commission with any conscious effort to bar editorials from the air.

In 1940 the FCC handed down a decision in the so-called "Mayflower case." The decision came after a hearing to determine whether the Mayflower Broadcasting Corporation, a new applicant, or Station WAAB, owned by the Yankee Network, should be licensed to use certain time in Boston. The Commission rejected the application of the Mayflower Corporation and renewed the license of WAAB.

The important issue in the case turned on WAAB's practice, carried on from early 1937 through September, 1938, of broadcasting editorials on behalf of various political candidates or supporting one side of various controversial issues. The Commission granted the renewal of license only after WAAB made "comprehensive and unequivocal representations" that no editorials would be broadcast, that the station would have no editorial policies, and that no attempt had been or would be made to color or editorialize news.

[2] Station KFXJ, Grand Junction, Col.

The Communications Act requires that equal opportunity be afforded all qualified candidates for a public office. In other words, if a station offers its facilities to one candidate without charge, it must extend the same courtesy to his opponent. If time is sold, then equal conditions as to price, available time, etc., must prevail. Of course, the broadcaster has a perfect right to refuse all candidates, if he so desires. This, too, would comprise equal treatment. The station involved in the beforementioned case allegedly endorsed a political candidate and broadcast editorials on his behalf, but failed to offer equal opportunity to his opponent.

Unfortunately, few people remember the actual circumstances of the Mayflower case. There has been a widespread misunderstanding as a result of the inference that can be drawn from one of the conclusions in the FCC's decision in this case. That is the statement to the effect that "the broadcaster cannot be an advocate."

Some broadcasters and many members of the public have interpreted this statement to mean that stations cannot advocate anything. Thus, some broadcasters are loathe to take part in the promotion of vital community projects, and certain minority groups use the Mayflower inference in the spirit of sophistry!

Personally, I have never felt that the Commission intended to thwart judicious use of their own facilities by public-spirited broadcasters. However, I believe the Commission would do broadcasting a great service by clarifying this point. Last February, the broadcasters of the 14th District, in convention at Salt Lake City, unanimously endorsed a resolution asking that such clarification be made. The resolution closed as follows: "That the broadcasters . . . petition . . . to bring about a revision of the said inference in the Mayflower case and establish the rights of broadcasters to present views under their own sponsorship in keeping with the Constitutional guarantees of freedom of speech."

I think some of the people who fear exercise of the broadcaster's prerogative to editorialize do so because they confuse the term to mean "assume a biased political attitude." Webster defines editorial as "an article given featured position and sanctioned by the owner of the publication." There are hundreds of individual community needs that can be met by a well defined editorial policy on the part of the local station. I think

this is particularly true in the so-called "small market" station category.

If you will pardon a few personal experiences, let me tell tell you something of the editorial projects which we have undertaken at my station in western Colorado.

About a dozen years ago, the people of our area were informed we would have to share our water resources with the cities of what is known as "the eastern slope," in other words, the area to the east of the Continental Divide of the Rocky Mountains. Since the annual snow-fall on the western slope of the range is customarily higher than on the east, diversion tunnels were planned which would tap our water supply at the head-waters of the Colorado River. Any of you folks who are familiar with western history are aware of the tremendous importance of water, and not a few bloody battles were fought over this prize resource in the pioneer days.

Station KFXJ secured the best possible legal counsel, conferred with officials of the Reclamation Bureau, and employed considerable research to get at all the facts. We found that it would probably be futile to simply oppose the diversion scheme. While in area our section comprised the largest part of the state, and was the richest from the standpoint of natural resources, we were hopelessly outnumbered in population by the eastern slope, which encompasses the City of Denver. KFXJ launched an editorial campaign calling for the construction of compensatory reservoirs that would impound water during the flood season of early spring and thus assure an even annual flow of water down the Colorado River during the season when water was needed by our farmers and ranchers. It would thus provide, also, for diversion of badly needed water to our neighbors across the mountains without entailing any sacrifice to western Colorado water users.

Our campaign met with instant success. Newspapers in both areas of the state enthusiastically supported our campaign and the reservoirs were built. Radio, by its ability to reach out over a wide area and inform, thus averted a great deal of sectional strife among our people and aided materially in expediting a worthwhile project. KFXJ had to be an *advocate*, in this case. We *advocated* a specific plan. We also asked for other suggestions and would gladly have publicized them had we received any. We could probably have employed someone else to deliver some speeches about it over the radio, but the point is,

that right are in violation of the first amendment to the Constitution.

Radio as an industry has been in the hands of people who have earned public trust by the exemplary fashion in which they have served the public. Hence, broadcasters are qualified to assume the responsibilities inherent to editorial use of radio.

While it is, of course, not mandatory that broadcasters present editorials, they should be encouraged to do so in the interest of the broader field of public service.

Broadcasters should fashion a code of ethics, covering the use of their facilities for editorials, that will assure high standards of service. This should be preferably on a voluntary basis; not by federal mandate.

In its own interest as well as that of the broadcasters and the public, the FCC should rescind its statement in the Mayflower case that "radio must not be an advocate."

ROBERT D. LEIGH[3]

DURING ITS NEARLY THREE YEARS OF EXISTENCE, the Commission on Freedom of the Press has concerned itself directly with this particular problem in its more general aspect: that is, the present machinery and policy for handling controversial discussion in the five major mass media. I shall attempt to summarize the Commission's conclusions by stating four or five propositions basic to an analysis of the problem.

The propositions are greatly condensed from the Commission's general report, "A Free and Responsible Press." This report, in turn, is a summary or condensation of six longer and more detailed reports, only three of which have yet appeared in published form. One of the three is a report to the Commission on the American radio, specifically that by Llewellyn White of the Commission staff. Two of the reports not yet off the press form an equally important background for the Commission's conclusions in this area. They are Dr. Hocking's report on the background of principle and theory for freedom of the press, and Zechariah Chafee's two-volume analysis of the relation of government to mass communication. My condensed statement draws from these three special reports as well as from the summary report. Behind each one of the propositions, therefore, there are many pages of exposition in the Commis-

[3] Commission on Freedom of the Press, New York.

sion's reports, and many more pages of discussion and analysis in the Commission's unpublished documents.

Now as to the series of propositions:

FIRST: — Freedom of expression as an effective individual right constitutes a fundamental basis for the maintenance and success of a free, democratic society.

SECOND: — This basic concept was given partial expression in the free press clauses of our constitutional documents. As interpreted by our courts, these clauses provide an effective guarantee that governmental regulation shall not abridge free, individual expression.

THIRD: — In the contemporary situation with mass communication concentrated to a considerable extent in each locality, and in the nation, in a relatively small number of relatively large units, protection against government is not enough to guarantee that a man who has something to say shall have a chance to say it. Necessarily, the owners and managers of the media determine, to a large extent, which persons, which facts, and versions of the facts, which ideas and which causes shall reach the large masses of people. The way they exercise this inevitable control determines the degree of the effective maintenance of freedom of individual expression. Thus, abridgment of free expression may be as harmful, may be as dangerous, as ever were the actions of royal officials on the writings of Peter Zenger. Furthermore, we cannot prohibit by law this control by the media of the people who use it. They must somehow regulate their own selections so as to give maximum opportunity for the man with something significant to say to have his say.

FOURTH: — Equally basic with individual expression as a concept underlying democratic society, is the need to provide every citizen with an adequate and uncontaminated daily diet of the current news, of the conflicting ideas and arguments on public issues; with fair pictures of the attitudes of the groups that constitute the society. The need is so essential to a democratic process that it acquires the stature of a citizen's right and for the agencies of mass communication an obligation which they must reasonably meet as the price of their freedom. A free press and radio and film industry, therefore, must be a responsible or accountable press, radio, and film industry.

FIFTH: — This responsibility on the part of the major media of mass communication means that they "should regard

themselves as common carriers of public discussion. By this the Commission does not suggest that they should be subject to the legal obligations of common carriers, such as compulsory reception of all applicants for space, regulation of rates, etc. The press and radio cannot and should not be expected to give space for everybody's ideas." But, the major units should assume the duty of publishing objective, impartial news, and significant ideas contrary to their own. Their control over the various ways of reaching the ear of America is such that if they do not present ideas which differ from their own, those ideas will not reach the ears of the mass of Americans.

More specialized media of advocacy have a continuing and vital place. They should be plainly labelled as such. But especially we need the general mass medium which, although it may present its own views as editorial comment, has as its main function setting forth all views held by considerable numbers and reaching across all groups in the community. This is especially so because of the tendency in our large-scale, urbanized society for each group to remain insulated from others, reinforcing its own unchallenged assumptions by conversations, leadership, and partisan journals, so that its assumptions harden into fixed, unchallenged prejudices.

Thus far, the Commission! On the specific question of whether in the field of radio the owner-manager should serve as editorial advocate as well as common carrier of news and discussion the Commission did not declare itself.

Mr. White, in one of his own proposals, did declare himself. Interpreting the Commission's general position and applying it to the Mayflower decision, he suggested to the FCC that it "amend the Mayflower decision to permit broadcasters to air their partisan views on condition that they provide equal time for an answer." Mr. White's proposal permits the station owner to air his partisan views if he wishes, but only on condition that he maintain the form and reality of the station or network as a common carrier of news and discussion.

It would be logically conceivable, but quite impractical, of course, to get the result another way. We could consider all the stations serving any one area as together forming a common carrier. But then the FCC would be faced with the infinitely difficult task of licensing the stations in the area according to an ideological pattern so as to represent the whole spectrum of opinion and group representation. And this system would break

down completely in smaller places served by only one, two, or three stations.

So much, as regards FCC policy and the Mayflower decision! Mr. White, in his book, goes further and proposes to the station owners that they "assume a position of vigorous editorial leadership in public affairs." My own emphasis would be in the opposite direction. I agree that the broadcasters should be free, legally, to become editorial advocates if they choose to do so. And in large cities a few local stations might serve a very useful function as radio journals of advocacy. But, for most stations, I think the function of common carrier is best performed by developing the greatest skill, courage, and wisdom in exercising the difficult and important function of umpire and interpreter of controversy. I believe that the broadcasters and FCC here have been on the right track, and that, despite some nostalgic yearnings for the days of Greeley, the great newspapers are moving gradually in the same direction. A comparison of the readership of the newspaper editorial page and of the by-line columnists—equivalent of the radio commentators—shows the major trend. It is a trend toward acceptance of the common carrier function.

Why is it that extensive polls of citizens show, in almost every case, that people trust the reliability of radio news and comment more than they do the newspapers? No one really knows the answer. It may be the greater confidence engendered by the human voice as compared with cold print. But I venture the opinion that the preference is due partly to the implausibility, to people of common sense, that the newspaper owner who, on one page, plays the role of zealous partisan, often as a political leader, on all the other pages, by some successful schizophrenic device of personality, plays the impartial, objective role of umpire and arbiter of news. Much more plausible is the radio station or network practice which offers to its customers a medley of opinion by people whose views are labelled as their own, with the station management, itself, standing silently in the background as the symbol of tolerance and impartiality.

I believe that this symbol is worth cultivating, with single mind and clear purpose. Partisan advocates are cheap; they can be found on every street corner. But the function of umpiring, of giving room to the really *significant* though unpopular individual ideas and the opinions of all considerable groups in

public controversy is difficult—very difficult. It requires persons of great sophistication and of judicial temperament. They are rare. They must be trained after they are found. It is these people that I should like to see gravitating to the top in radio station management. This would be my high ambition for the policy of broadcast management in our society.

ALLEN SAYLER[4]

THIS QUESTION OF EDITORIAL POLICY IN RADIO has to do with freedom of expression, a subject of primary interest for educators and broadcasters. Freedom of expression is intertwined with other fundamental principles of our democratic society, with political democracy, social equality, and competition in the economic sphere.

If there is some truth in the idea that free expression and tolerance of opposing views thrives in a period of prosperity, today, at first glance, here in the United States we should be witnessing the widest latitude of expression, the greatest competition in ideas we have ever seen.

Business is booming. We are close to full production and high employment. Labor and management have reached agreement on wages and other conditions in the key industries of the country. Our land and our people have not been ravaged by foreign invasion. Economically we are in a position where we are able to proceed with the business of building democracy.

Instead, today we are engaged in a struggle over whether or not we shall maintain the democratic institution of free trade unions and the democratic principles of freedom of thought and free expression. Why is this so?

A second glance at our economic picture reveals some facts that bear on our difficulties.

American industry's profits are the highest in their history. But these abnormally high profits are coupled with an all-time high in price levels, with a cost of living that means reduced living standards for the great bulk of the people of the country. Purchasing power is declining, the consumption of goods is declining. In recent weeks, the forecast of a slump or recession has moved from the financial page to the first pages of the newspapers.

Of equal importance has been the narrowing or restriction

[4] Radio Representative, UAW-CIO, Washington.

of competition in the economic field by the tremendous growth in the concentration of economic power in the last seven years.

What has this matter of the growth of monopolies and the forecast of a business recession to do with freedom of expression and editorial policy in radio?

It seems to me that it has this to do with it. The free expression of views and opinions on social, economic, and political questions provides some check on the behavior of large corporate interests and monopolies. The removal of competition in the field of ideas would be of benefit to the large corporations much as the removal of competition in business.

There is a trend today towards imposing severe restrictions upon labor organizations in the country. Here at this Institute there has been some evidence that some commercial broadcasters would prefer not to have the competition of vigorous, live, non-profit, non-commercial educational stations.

The present campaign urging punitive action against democratic organizations of workers and towards imposing conformity of ideas under the penalty of a challenge of your patriotism will thrive on a one-sided presentation of views and opinions and will soon die in an atmosphere of free expression of controversial views and opinions on public issues.

Twin demands for editorial rights and the creation of property rights in radio channels for owners of broadcast stations are part of a current trend towards concentration of control in the expression of ideas. This trend in the field of expression of ideas reflects the concentration of economic power in the radio broadcasting industry.

Reports for 1946 show that five corporation sponsors provide one-fourth of the network billings, and just 10 corporation sponsors supply over one-third of the network billings.

If certain advocates are victorious in their fight for property rights in radio channels and station editorializing, their victory will be over you, the American listener. You will be the victim. For your daily decisions in building a stronger democracy you will have lost a large part of your opportunity to choose alternatives through the competition of ideas.

In a truly free radio, it seems to me, the owner of a broadcast station will have rights of expression that are neither greater nor lesser than those of other responsible persons or organizations in the community the station serves.

In the WHKC case, the UAW-CIO fought for observance

of the principles of balanced programming, against the censorship of ideas, and for equal treatment of opposing views on controversial issues. In the union's proposed FM stations, 800,000 auto workers are confident they can demonstrate the soundness of these principles for radio in a democratic society.

To those who advocate that radio have an editorial policy, let them examine some of the implications of that position.

In radio, as in other media of mass communication, the dominant interests are the large corporations and powerful business interests. The purpose of editorializing is to mold public opinion.

The power of radio to sway people's attitudes, opinions, and beliefs is universally recognized. Ideas are sold over the radio as well as products. Now it is one thing for an idea to be sold by survival in competition with conflicting ideas. It is something else for an idea to be sold because there is no other idea to be purchased.

Doesn't editorializing by radio station owners mean the molding of public opinion to those views and opinions which are preferred by the large powerful corporate interests in the country?

There are undoubtedly some persons who actually believe that private property in radio channels is desirable, and also that it is desirable that the views of large corporate interests be brought to the public in preference to the views of other segments of the community. The fact that a frank statement of such a position would very likely be unpopular should not restrain such advocates. The open support of that position might well clarify this whole issue.

If, as I believe, editorializing by radio station owners is not in the public interest, is there then any improvement that can be made in present radio policy? I think there is.

There can be a greater recognition of the value of the presentation of controversial public issues, a more energetic effort to include on radio programs representatives of underprivileged groups in radio. Specifically, I might mention working farmers, Negroes, labor, and such non-profit organizations as cooperatives. Additional improvement would result if a diversity of groups was represented in radio station ownership and if the true role and function of the FCC were recognized.

Other speakers have urged you to listen critically to radio programs, local and network. I wish to join my voice with

theirs, adding this suggestion. After you have listened, speak! If you have heard balanced programming, equal treatment of opposing views, tell the station, the network; tell the FCC and your friends. Those are the programs which will maintain and extend democracy. But if you have heard a one-sided presentation, then speak up, too, for by your silence you will be voting for the loss of important rights that you are entitled to as a listener.

PAUL D. P. SPEARMAN[5]

I SUPPOSE THAT MY THINKING AND MY ANSWER to the question, "Should Radio Have an Editorial Policy?" conforms to the thinking of no other man; that I may be put down as a nonconformist from the very outset.

Briefly, I am personally opposed to any attempt to infringe upon or limit the right of free speech, whether by radio or otherwise. I am a stickler for the maintenance of all constitutional rights and am unalterably opposed to any tinkering with any of them by Congress or by any administrative agency which the Congress may create. I believe, however, that there are legal rights which should be exercised most sparingly, and I do not believe any of them should ever be abused. Because editorializing is such a tremendous responsibility, I personally believe that the right to editorialize should be exercised, if at all, only in extraordinary circumstances. The right should be used only when it follows the ascertainment of all facts and an objective analysis of them, and these requirements can be set only by men of outstanding experience who possess the highest order of common sense and good judgment.

Editorials, in my opinion, should never be broadcast with reference to controversial issues which admit of logical argument, both pro and con, supported by facts. Such questions should be reserved for bi-partisan discussion to the end that the public may get the benefit of all the facts, and to the further end that intelligent listeners may form their own opinions on the basis of the facts presented on both sides of the subject, without having to depend upon the argument of another.

My real thinking on the subject of editorials can best be stated by referring to an experience I once had in court. I argued in support of a motion then before the court. During

[5] Attorney, Washington, D. C.

the course of the argument by my adversary, in opposition to the granting of the motion, he was interrupted and asked by the court, "Does counsel challenge the power of the court to grant this motion?" My adversary quickly flashed back the answer, "Counsel does not challenge the power of the court to grant the motion, but he does say that if the court exercises that power the court should be impeached!" That just about states my position with reference to editorializing.

The right of free speech is guaranteed by the First Amendment to the Federal Constitution, and I, like millions of others, am adamant in my opposition to any attempt at limitation of that right, and *that* regardless of who may attempt to circumscribe it.

The Congress is completely devoid of power to limit or restrict the plain meaning of the First Amendment to the Constitution. Further, it is axiomatic that the Congress cannot confer power upon an administrative or quasi-judicial agency to do that which the Congress itself is precluded from doing. In short, the Congress cannot clothe the Federal Communications Commission with power or authority to restrict the right of free speech, and any attempt to confer such authority on that Commission would clearly be unconstitutional and invalid. It follows as a matter of course that the Federal Communications Commission has no authority to promulgate a rule or render a decision which would prohibit the broadcasting of editorials by radio. Actually, for the Commission to make such a rule or by decision establish such a precedent not only would violate the First Amendment to the Federal Constitution, but would be a clear violation of Section 326 of the Communications Act which specifically prohibits the Commission from exercising any power of censorship over that which is broadcast by radio stations.

If it should be assumed that broadcast stations are to go in for editorializing on this, that and the other subject or issue, what, in general, may be expected? In the main, we could expect the slanting of editorials in the direction of what would be best personally for the broadcaster. Since he is limited to receiving a license for a maximum of three years and must apply to some agency of the Federal Government every three years for the right to continue in business, that simply means that under a Democratic Administration he would tend, in most cases at least, to go along with the Democratic line of thought,

and under a Republican Administration the same slanting in the direction of the administration in power would follow as inevitably as the day follows the night.

All of this is true because radio broadcasters are dependent for their very existence upon securing licenses at the hands of the Federal Government. Broadcaster after broadcaster would seek advantages through editorial support of the "powers that be" and attempt to convert that advantage into some reciprocity of a favorable nature.

The Congress provided in the Radio Act of 1927 and in the Communications Act of 1934 that broadcast stations must be fair and offer equal opportunities to legally qualified candidates for public office. That was unnecessary unless the Congress was convinced that what I have just stated would be the result if stations were left to do as they pleased and editorially favored one candidate over another.

Many have overlooked the fundamental proposition that the frequencies or wave lengths on which broadcast stations operate do not belong to the licensees of stations, but on the contrary belong to all the people. These frequencies serve as pipelines into the millions of American homes. One American citizen has the same fundamental right as any other citizen to argue in support of his views on any subject. Since it would be impossible for all people to air their views by radio, such rights become empty, indeed, if a few out of many millions are permitted to fill the air with editorials in support of their pet ideas.

The fact is that many of those who argue that editorials should be broadcast by radio are erroneously convinced that they possess superior intellect to their fellows, and that they must mount a white horse and lead the community, the state, or the nation in the right direction. My personal belief is that those who are most vociferous and clamor loudest for this are much less capable than the quieter and calmer thinker who has not become inflicted with such a superiority complex that he almost, if he does not, honestly believes that he can lift the world up by his own bootstraps.

There are others who would broadcast editorials out of a deep-seated desire to be dramatic or sensational. Still others who would do the same thing even though they knew in advance they would make trouble for others and get into trouble themselves, but always hoping they would turn out to be self-made heroes.

This adds up to a very great danger for radio broadcasting in general. To me it means that broadcasters should exercise restraint and pinch themselves to see whether they are awake or sleeping when they decide they want to lead the procession in saving the world through broadcasting editorials. Frankly, I am convinced that only a small minority of broadcasters would go in for editorializing even if the Congress enacted a law and the Federal Communications Commission made a rule specifically permitting such activity. Most broadcasters are men of good judgment and all honest commercial broadcasters freely admit they are in broadcasting for the reason, among others, of making an honest dollar. Some short-sighted bigots actually take the position that profit is the only thing which motivates broadcasters, but any such assertion is based either upon ignorance or depravity.

I take the position that although neither the Congress nor the Federal Communications Commission has the right to restrict the right of free speech, and the Commission does not have the right to censor programs or make rules or render decisions which would do the same thing, broadcasting should continue to grow and fill its great destiny as a transmitter of intelligence rather than trying to be an interpreter of that intelligence or a proselyter of the public. I repeat—the public is able to understand facts and is quite capable of reaching correct conclusions. Let radio give them the facts.

DISCUSSION

I. KEITH TYLER,[6] Presiding

CHAIRMAN TYLER:

The first period of this discussion will be among the people on the panel. We hope to sharpen up some of the conflicts, if there are conflicts.

MR. ALAN GRIFFIN:[7]

I am disturbed by the line of thought which says that constitutional freedom of speech is a major issue in this discussion. It seems to me that limitation of freedom of speech would come if we said to broadcasters, "You cannot have the same access to public facilities as other people."

I see no reason why a broadcaster who represents a group that is discriminated against or is not being heard should not have a right to

[6] Ohio State University.
[7] Ohio State University.

go to any station other than his own and demand time to express that group's judgment. I don't see how freedom of speech enters into the question of the broadcaster's right to use a facility, a wave length, over which he has monopoly, in the interest of expressing his own opinions. It would seem to me that he is not at all shut off any more than anyone else from the regular channels of freedom of expression.

MR. HOWELL:

I would just like to ask Mr. Griffin if he means that he is opposed to the broadcaster's having equal access to his own facilities along with the other members of the general public. Do you believe, then, that a clarification of that particular language of the Mayflower decision is in order?

MR. GRIFFIN:

I think, Mr. Howell, you raised the difficulty that worries most of us when you pointed out that, in those abundantly desirable things your own station did, you said: "the listeners had faith in us and had faith in the station." Therefore, the listeners gave more support and more attention to your statement of the situation.

I don't think there would be any difficulty with the Commission in your case. However, if a man owned a radio station and decided to use that control to air his political or economic views steadily and incessantly, it seems to me that such broadcasts probably would not merit special attention and special consideration. I should think that radio broadcasters, like the rest of us, ought to be required to get "space" rather than having a special access that is barred to the rest of us.

Substantially, Mr. Fly says, directly in answer to your question, that he favors letting the decision stand where it is.

MR. SPEARMAN:

Mr. Chairman, in talking about the infernal Mayflower decision, I suppose I am the only living man who knows what is in that record because I spilled blood in getting it in. The man who heard that case is now dead.

I don't think the Mayflower decision should have been written as it stands.

I think it should have been thrown into the ashcan rather than released. I think the Federal Communications Commission still ought to say something that would indicate they do not feel bound by the decision.

The decision went all out in left field. It didn't decide the case on the record. It simply set up a prerequisite for someone to meet before he could get a license. If that wasn't censorship—the way it was handled—I am a monkey.

The Commission established a precedent. It set up a condition to

be sworn to before it would renew a license, and this amounted to nothing less than censorship. The applicant was told in advance what he could not do, and he should not have been told any such thing.

In addition to that, the record in the Mayflower case would not support a lot of these generalities about editorializing. The cold fact is that the Mayflower case shows, in many instances, that my client, John Shepherd, was but one voice crying in the wilderness against a lot of things that are similar to the things that Mr. Howell mentioned.

I don't think the Mayflower case relates to the things Mr. Howell cited. I think he is to be commended for them. But, I don't think they are editorials in the strict sense of the word. I think he is just doing a good public service job in carrying out enterprises which are good by their own self evidence.

But about this Mayflower decision. I think it ought to be thrown in the ashcan. That's where it should have gone in the first place.

MR. LEIGH:

I don't find many differences between the five people who have spoken. A definition would help to resolve some of the differences, but the definition is certain to leave a "twilight zone," as Mr. Fly pointed out in his paper.

Mr. Howell talked about editorial advocacy. There are a great many public problems in which a radio station, with an interest in the community, can render notable service. Broadly speaking, these are non-controversial things and I should say that the Mayflower decision probably never was intended to prohibit such discussion. We might all agree they are legitimate.

On the question of "partisan advocacy," as some of the speakers have phrased it, I join in the point of view that an owner of a station may engage in it if he so chooses, provided he maintains the balance of argument on his own station. I go further than that, however, and if I were a station manager I would choose the extremely difficult task of trying to be an umpire and an interpreter, which is at direct variance to being a partisan advocate.

MR. SAYLER:

I have a question for Mr. Spearman. In the absence of the Mayflower decision, what is a group to do that has views opposed to those expressed over its community radio station, when the radio station refuses to grant time?

MR. SPEARMAN:

I think that radio broadcasters ought to afford equal opportunity for the presentation of any question of importance in the community. Naturally they have to exercise some discrimination; there would not be

enough time in the 24 hours otherwise. In this connection, I think the public interest very often is much better served by affording separate times for people to present conflicting views. I don't want to leave the impression that I think all these questions ought to be aired in the form of debate.

MR. HOWELL:

I want to say to Mr. Sayler that broadcasters have no quarrel with the requirement relating to political candidates being accorded equal access to facilities. The question at point is actually whether, under the inference that may be drawn from the Mayflower decision, the broadcasters have an equal opportunity themselves to use their own facilities.

I would like to ask you a question, Mr. Sayler. At present, the UAW-CIO has an application for station facilities on file. In the operation of your station, do you propose at any time to editorialize on labor's behalf?

MR. SAYLER:

We have stated in our application to the FCC that we will follow the principles we espoused in the Columbus WHKC case—we will give equal time and fair treatment to all opposing views. I will say, further, that in each city where we have applied we have asked the Chamber of Commerce or the Manufacturers' Association to set up a regular weekly program to be heard over our station. We also have addressed similar offers to the AFL and the CIO.

CHAIRMAN TYLER:

We will have questions from the floor now, please.

MR. BURTON PAULU:[8]

Most of our speakers seem to be in pretty general agreement so what I have to say is in the nature of a footnote.

The average person seems to have more faith in news reports heard over the radio than in news read in newspapers. Like all of you, I am aware of the editorial policies of newspapers—policies which often are reflected in the handling of the news columns. Yet, when I listen to news on the radio I am seldom aware of any personal feelings one way or another. I am convinced that one of the reasons for the wide prestige enjoyed by radio news reports is the fact that listeners have come to identify radio stations as impartial purveyors of news. If radio should adopt a policy to editorialize at one point, they might well do so at another point; in other words, in their normal news programs.

MR. HOWELL:

May I comment on that? I think that editorials never should be presented as part of a regular news broadcast. This would be highly

[8] University of Minnesota, Minneapolis.

unethical. I think we all agree on that. Newspapers have a separate section for editorials and I think radio should follow that pattern.

MR. DAVID R. MACKEY:[9]

I would like to ask Mr. Spearman a question. The wording of the First Amendment is exactly the same now as it was when the Bill of Rights was inserted in the Constitution. Do you believe the meaning of these words has changed? When we say "free speech" now, does it mean exactly the same thing that it meant then?

MR. SPEARMAN:

If there has been any change, it has been in application because of new mass means for communicating to people. There has been a change in the interpretation of the courts on a lot of the provisions of the Constitution. But I still think free speech means free speech, and I do not think Congress has any right to restrict it or abridge it. Obviously, if Congress does not have that right it cannot confer the power to anybody else.

MR. THOMAS J. PAGE:[10]

I would like to inquire a little further with Mr. Spearman regarding the definition of free speech. As a person, an individual may stand on a soap box or stump and sound off at his pleasure. But when he has a microphone and his voice reaches an unnumbered group of people, then he becomes an institution. While the Constitution may deny the right to prohibit the free speech of an individual, I think it has been well established that organizations are in a very full sense susceptible to control. Certainly that must be true of the owner, manager, or other responsible official of the broadcasting station.

Would Mr. Spearman care to speak to that?

MR. SPEARMAN:

I will have to give you the answer of one of our law partners. He is one of the numerous people who disagree with me. He takes the position that since the radio frequencies belong to all the people, Congress is the regulatory body to determine how the people's property shall be used. Therefore, Congress does have the right to put certain limitations on the use of the people's property which it would not be permitted to invoke if the frequencies were not the property of the public itself.

I do not go along with that. I do not think Congress ought to monkey around with free speech. My law partner agrees with the implication of your question entirely, and he goes further. He thinks

[9] Northwestern University, Evanston, Ill.
[10] Station WNBC, New York.

Congress should pass a law prohibiting all editorials. I don't believe that, either.

MR. PAUL W. MCGUNE:[11]

In listening to Mr. Howell, I wonder why couldn't we have editorial programming that would be more or less in the public service? It would be something for the blind to hear; something for those who do not know how to read.

MR. HOWELL:

I appreciate that view very much. I think in the field of adult education, radio and the educators have a great challenge and a great common area of agreement. The small items, in which there are honest differences of opinion, are of little consequence compared to the great problem that lies ahead.

MR. SAYLER:

There are two questions I would like to address to the members of this panel.

One has to do with the matter of the presentation of public issues. In 1941, the FCC made a survey covering a six-months' period, on the number of stations carrying programs on such subjects as Lend-Lease, Convoys, Basis for Defense, and the general question of isolation or intervention. At the time, these were hot questions. The newspapers were full of them. Out of 844 stations, 388 reported they had one or more network programs on this general subject. Between 200 and 300 stations carried not a single program on these issues during the six months' period.

My second question is this: What is a substantial group in a community to do when the radio station refuses it time on the air to voice its views on a controversial issue?

MR. A. A. SCHECHTER:[12]

In fairness to the local stations, I will answer part of the first one. Mr. Sayler overlooks the fact that practically every radio station has from four to eight news broadcasts a day. While stations may have no debate on certain subjects, they carry volumes of news broadcasts, citing both sides of that issue and quoting important people on it.

CHAIRMAN TYLER:

We still await some reply as to what a representative of a substantial group is to do when he is denied facilities.

MR. EDGAR KOBAK:[13]

What you shall do is write your Congressman.

[11] Station WBNS, Columbus.
[12] Mutual Broadcasting System, New York.
[13] Mutual Broadcasting System, New York.

MR. SPEARMAN:

Mr. Chairman, on this question I have taken the position, ever since I joined the staff of the Radio Commission in 1929, that the only excuse for the existence of a radio station was to carry programs, and that those programs ought to be such as would serve the public interest.

If substantial groups are denied the right to present their views, in a decent way, by competent people who know the answers, I think, frankly, that is a failure on the part of the station. It ought to be chalked up against the station.

MR. SAYLER:

It seems to me that broadcasters, educators, and the general public need to understand the true role of the FCC and the fact that radio channels are public property. The only way this can come about is through some specific language of the FCC, spelling out public interest and what public interest means in the ownership and operation of the radio channels.

We need to have opposing views broadcast on all live controversial issues that affect the public. In the past year, if there had been some spokesman on the radio who was heard regularly every night on the issue of price control, taking a point of view opposed to that of Fulton Lewis, I believe we would not be in some of the trouble we have today on the matter of high prices.

MR. LEIGH:

I would suggest there is a special function of the broadcaster in our society. He must serve both as a judge and interpreter. It would be worthwhile for our society to have the 1,000 or more people in charge of radio trained to perform that function well. I believe this would be a more valuable function than that of partisan advocacy, which obviously station managers could do as well as the people they hired.

MR. SCHECHTER:

Mr. Sayler, will you answer one question? There was a little matter of a coal strike recently. The head of the coal association wanted time on the air but John L. Lewis wouldn't talk. What do you recommend in such an issue?

MR. SAYLER:

If the question is an important controversial issue, one side should not be able to bar the other from the air by refusing to participate.

MR. ERIK BARNOUW:[14]

I would like to pursue further the question of what an organization can do if refused time on the air. The only answer so far is that at a later time, possibly three years away, it could fight against renewal of

[14] Columbia University, New York.

that station's license. Does any member of the panel see a possibility for developing a more rapid solution?

MR. LEIGH:

I believe that the rather awkward system we have also has its advantages. The FCC is not likely to deal with a specific program as this might tend to approach censorship. It is an accumulation of grievances that might bring action by the FCC.

MR. SPEARMAN:

This system of ours is called cumbersome. But I would rather have it than the system in some countries, where all you have to do is hand so much coin of the realm to the officer in charge of communications to get what you want. I will take the old American way. I don't know of any problem that is of such great importance you would have to tear down the door.

MR. GRIFFIN:

Does that mean that groups denied access to the air really can do nothing much except wait three years to protest about renewal of the license?

MR. SPEARMAN:

The answer is, No. The Commission's licensing procedure is such that if you want to apply for somebody's facilities you don't have to wait until that fellow's license expires. The Commission can decide the whole business in 30 days and revoke a license. I am not saying it is done with regularity, but it is possible.

MR. HAROLD WAKELY:[15]

Speaking as chairman of the Tri-City Radio Council, I wish to outline a problem facing us. We have a religious news commentator who simply reads the report from a competent religious news service. The program is non-partisan. It represents news of all faiths. However, our program is censored by the station. All of the items that relate to controversial subjects are deleted. We have to maintain good relations with the station. We cannot make an appeal to the FCC for a hearing in this case. Yet we would like to have a specific statement from the Commission so that we could approach the station manager and say: "Here it is. We would like to have a better deal."

MR. SPEARMAN:

You apparently want the Commission to make a rule you can use as a club to force on the program something you say the station has been censoring. You refer to this as a censorship of things which are controversial.

One of the worst things that can happen in any community is

[15] Troy, N. Y.

religious strife. If this station is simply deleting controversial statements that would stir up the feelings of somebody who belonged to another faith, I think the station is to be commended.

MR. WAKELY:

That is not the case in our particular situation. We are supported financially by Jewish organizations as well as the Protestant Councils of three cities, Albany, Troy, and Schenectady. We are interested only in doing the kind of a job that the National Conference of Christians and Jews is doing. We are trying to promote good will between religious groups.

CHAIRMAN TYLER:

I think we are getting into the area of the station's responsibility. Legally the station is responsible for everything that is broadcast. It has to exercise editorial discretion. The question is how far it should go. I don't know if there is any definite answer.

MR. SIG MICKELSON:[16]

I wish to say a few words about this question of editorializing on the air. Personally, I am strongly in favor of taking a vigorous stand on matters of public interest. I think we have done so at our station. Many stations are doing so. Generally speaking, however, I do not believe we are ready. We do not have the qualified researchers to go into these questions and produce the facts on which to base our positions.

When editorializing on the air comes, it should not be a case of the manager exercising his personal opinions, as publishers of some newspapers have done.

CHAIRMAN TYLER:

That seems to be a good note on which to close. I will attempt briefly to summarize. We have clarified the fact that there is in this group no difference of opinion on the matter of presenting vigorously matters of public interest which are not particularly controversial. On the other hand, we have had the extreme proposal that "radio stations should be as free as the newspapers." In between we have the twilight zone of matters of partisanship. Here we found some difference of opinion, both among the audience and in this panel, as to just how far radio might go.

[16] Station WCCO, Minneapolis.

Scanned from the National Association of Educational Broadcasters Records
at the Wisconsin Historical Society as part of
"Unlocking the Airwaves: Revitalizing an Early Public and Educational Radio Collection."

A collaboration among the Maryland Institute for Technology in the Humanities,
University of Wisconsin-Madison Department of Communication Arts,
and Wisconsin Historical Society.

Supported by a Humanities Collections and Reference Resources grant from
the National Endowment for the Humanities

MITH MARYLAND INSTITUTE FOR TECHNOLOGY IN THE HUMANITIES

UNIVERSITY OF MARYLAND

WISCONSIN HISTORICAL SOCIETY

WISCONSIN UNIVERSITY OF WISCONSIN–MADISON

NATIONAL ENDOWMENT FOR THE Humanities

Any views, findings, conclusions, or recommendations expressed in this publication/collection do not necessarily reflect those of the National Endowment for the Humanities.